

## EQUAL CREDIT OPPORTUNITY ACT (ECOA)

### OVERVIEW

The Equal Credit Opportunity Act, and the Federal Reserve Board's implementing Regulation B, prohibit discrimination in any aspect of a credit transaction on the basis of:

- Race
- Color
- Religion
- National origin
- Sex
- Marital status
- Age (provided that the applicant has the capacity to enter into a binding contract)
- Receipt of income from a public assistance program
- The good faith exercise of any right under the Consumer Credit Protection Act

These factors are referred to throughout the regulation as "prohibited bases". Regulation B deals with taking, evaluating and acting on applications for credit and the furnishing and maintenance of credit information. It does not prevent a creditor from obtaining information necessary to evaluate the creditworthiness of an applicant.

### Examination Objective(s)

The examination objectives are to determine:

- Whether the financial institution has engaged in actions which treat or have the effect of treating one applicant less favorably than another on a prohibited basis and seek corrective measures for affected parties
- Whether the financial institution's policies, procedures, and internal controls are adequate for compliance with Regulation B

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**DEFINITION(S)**

**Applicant**

Any person who requests or who has received an extension of credit from a creditor, and includes any person who is, or may become, contractually liable regarding an extension of credit. For purposes of Section 202.7(d), the term includes guarantors, sureties, endorsers, and similar parties.

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**Application**

An oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit.

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**Completed  
Application**

An application where the creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

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**Credit**

The right granted by a creditor to an applicant to:

- Defer payment of a debt
  - Incur debt and defer its payment
  - Purchase property or services and defer payment therefore
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**Creditor**

A person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of Sections 202.4 and 202.5(a), the term also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to who requests for credit may be made. A person is not a creditor regarding any violation of the act or this regulation committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

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**DEFINITION(S)**  
**(cont'd)**

**Credit  
Transaction**

Every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures).

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**Empirically  
Derived And  
Other Credit  
Scoring Systems**

A system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy. To qualify as an empirically derived, demonstrably and statistically sound, credit scoring system, the system must be:

- Based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and noncreditworthy applicants who applied for credit within a reasonable preceding period of time
- Developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment)
- Developed and validated using accepted statistical principles and methodology
- Revalidated periodically by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability

A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop such a system. Any such system must satisfy the criteria set forth above. If the creditor is unable during the development process to validate the system based on its own credit experience, the system must be validated when sufficient credit experience becomes available.

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**Extend Credit  
and Extension  
of Credit**

The granting of credit in any form. Including, but not limited to, the following:

- Credit granted in addition to any existing credit or credit limit
  - Credit granted pursuant to an open-end credit plan
  - Refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card
  - Consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity
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**DEFINITION(S)**  
**(cont'd)**

Any system for evaluating the creditworthiness of an applicant other than an empirically derived, demonstrably and statistically sound, credit scoring system.

**Judgmental  
System of  
Evaluating  
Applicants**

**Person**

A natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

**EXAMINATION  
PROCEDURES**

**Initial Examination Activities**

1. During Initial Examination Activities, examiners must review any written loan and appraisal policies, procedures, guidelines, etc., including collateral requirements and standards, applicable to each type of credit offered.

If written policies are not available, determine what policies and procedures are followed in practice through interviews with management and lending staff. Analyze these policies and procedures to determine if any discriminatory practices are evident. The analysis should include an evaluation of whether any of the policies or procedures fails the "effects test".

*Refer to the Initial Examination Procedures section of this manual.*

2. During Pre-Examination Planning and Initial Examination Activities, examiners must review the number and nature of consumer complaints.

Investigate the status of any consumer complaints concerning the lending function. Determine if any of the complaints warrant an in-depth credit discrimination complaint investigation.

*Refer to the Pre-Examination Planning (PEP) Procedures section of this manual.*

3. Interview personnel who respond to written or oral loan inquiries or take applications to determine that no statements are made to a prospective applicant that would, on a prohibited basis, discourage a reasonable person from applying.

*NOTE: Regulation B does not distinguish between oral and written applications in its prohibition of discriminatory action. Therefore, in the interview prior to and during the taking of an application, lending officers must refrain from asking for prohibited information. Questions must be neutral with regard to sex and asked of all applicants who desire the same type and amount of credit. (202.5(a))*

**Comparative Loan File Analysis**

**EXAMINATION  
PROCEDURES**  
**(cont'd)**

4. Comparative loan file analysis is central to the detection of unlawful discrimination on a prohibited basis. See the procedures found under “Sampling” in the Fair Housing Act examination procedures (Part III: H3-1) for the guidelines on how to conduct a comparative loan file analysis. While the focus in the Fair Housing Act examination procedures is on residential mortgage lending, the procedures also can be used to analyze other types of loan applications, such as consumer loans, to the extent that information in the applications would allow. When conducting a comparative analysis for ECOA purposes, spreadsheets must be used. The sample Fair Housing Act spreadsheet found in the Standardized Workpapers, Appendix K, should be used as a model, appropriately modified to reflect important categories or items of concern.

#### Other Areas for Investigation

5. Determine that no prohibited information appears in the institution files, was considered in evaluating an application, or was used as a basis in denying a credit application. (202.4)

6. Determine that information concerning the spouse of an applicant is obtained only where permitted.

*NOTE: The institution must not inquire about the applicant’s spouse, or former spouse, either on the application or orally, unless one of the following conditions exists:*

- *The spouse will be a user of, or contractually liable on, the account*
- *The applicant is relying on a spouse’s income to repay the debt*
- *The applicant resides in or is relying on property located in a community property state to support the credit request*
- *The applicant is relying on alimony, child support or separate maintenance income to repay the debt*

(202.5(c))

7. Determine whether childbearing intention capabilities are considered.

*NOTE: The institution may inquire about the continued ability to repay the debt, such as the probability of continued employment. However, the request must be made of all applicants who are similarly qualified without regard to any prohibited basis. The number, ages and expenses of present dependents may also be requested.*

(202.5(d)(4))

**EXAMINATION  
PROCEDURES  
(cont'd)**

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| 8.  | Determine whether the institution considered all income to the extent that it will continue and does not discount income on a prohibited basis. (202.6(b)(5))  |
| 9.  | Determine whether credit history, when used by the financial institution, is considered in accordance with applicable requirements. (202.6(b)(6))<br><br><i>NOTE: At the request of the applicant, the institution must also consider any information the applicant presents indicating that the credit history does not accurately reflect ability or willingness to repay. (202.6(b)(6)(ii)) and (202.6(b)(6)(iii))</i>  |
| 10. | Determine whether applications for individual accounts are not refused because of the applicant's sex, marital status or any other prohibited basis. (202.7(a))  |
| 11. | Determine whether applications for accounts in birth-given names are accepted. (202.7(b))  |
| 12. | Determine whether the institution offers casualty, credit life, health, accident or disability insurance in connection with extending credit. If yes, determine that information regarding the applicant's age, sex or marital status is requested solely to determine eligibility for insurance. (202.7(e))   |
| 13. | Determine through a sample of applications and loan documents whether the spouse of an applicant was requested or required to sign any instrument. If yes, determine whether the signature was obtained as permitted.<br><br><i>NOTE: Financial institutions must evaluate each credit request separately, determine how property used as collateral or support for the debt is held, and what signatures are necessary on which credit instruments to perfect a valid lien and ensure repayment of the debt. (202.7(d))</i> |
| 14. | Where a co-signer, guarantor, endorser, etc. was required, determine whether the choice of the second party was left to the applicant. (202.7(d)(5))   |
| 15. | Determine whether the institution qualifies applicants for special purpose credit programs in accordance with applicable requirements. (202.8)   |

**EXAMINATION  
PROCEDURES  
(cont'd)**

**Identification of Substantive Fair Lending Violations**

16. Substantive ECOA issues should be reviewed with the Regional Office prior to discussions with the institution's management as supervisory action may be warranted.

*Refer* to the "Guidelines for Referring Violations of the Anti-Discrimination Provisions of the Equal Credit Opportunity and Fair Housing Acts to the Department of Justice or Notifying the Department of Housing and Urban Development of Violations of the Fair Housing Act" Memorandum to Regional Directors, transmittal #DCA-003, dated 1/23/97.

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## **WORKPAPER STANDARDS**

Standardized workpapers must be completed when reviewing compliance with Regulation B. Refer to the sample Fair Housing Act spreadsheet found in the Standardized Workpapers, Appendix K, as a model. This spreadsheet should be modified to reflect information available from the file and important categories or items of concern. See also Side by Side: A Guide to Fair Lending, for further guidance.

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**FDIC LAW,  
REGULATIONS,  
& RELATED  
ACTS**

**Applicable Rules**

Consumer Credit Protection Act, Title VII – Equal Credit Opportunity, Volume 2, Page 6610

Federal Reserve Board’s Regulation B – Equal Credit Opportunity, Volume 2, Page 7209

Federal Reserve Board’s Regulation B Official Staff Interpretations, Volume 2, Page 7241

**Advisory  
Opinions**

Equal Credit Opportunity Act: Reg. B, Letter #89-44, Volume 1, Page 4420

**Statements of  
Policy**

Equal Credit Opportunity and Fair Housing Acts Enforcement Policy Statement, Volume 2, Page 5221

Policy Statement on Discrimination in Lending, Volume 2, Page 5397

**DCA  
MEMORANDA**

Guidelines for Referring Violations of the Anti-Discrimination Provisions of the Equal Credit Opportunity and Fair Housing Acts to the Department of Justice or Notifying the Department of Housing and Urban Development of Violations of the Fair Housing Act, Transmittal #DCA-003, dated 1/23/97

Examination Procedures for Advertisements and Public Notices, Transmittal #DCA-96-022, dated 2/22/96

General Workpaper Standards and Standardized Workpapers, Transmittal #DCA-96-003, dated 1/19/96

Initial Examination Activities, Transmittal #DCA-96-011, dated 1/31/96

Pre-Examination Planning (PEP) Procedures, Transmittal No. DCA-96-013, dated 1/31/96

Revisions to Official Staff Commentary to Regulation B – Equal Credit Opportunity Act, Transmittal #DCA-95-018, dated 6/15/95





**FINANCIAL  
INSTITUTION  
LETTERS (FIL)**

Equal Credit Opportunity: Appraisals and Enforcement, Letter #12-94, dated 2/28/94

Interagency Policy Statement on Discrimination in Lending, Letter #29-94, dated 4/29/94

Pamphlet on Home Mortgage Lending and Equal Treatment, Letter #19-92, dated 3/16/92

Revisions to Guidance on Fair Housing Rules (Part 338), Letter #23-92, dated 3/20/92

Side by Side, A Guide to Fair Lending, Letter #47-94, dated 7/7/94

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